Nos. 14486-14487

United States
Court of Appeals
FOR THE NINTH CIRCUIT

HARRY JONES, *Appellant,*

vs.

UNITED STATES OF AMERICA, *Appellee.*

CARRIE A. JONES, *Appellant,*

vs.

UNITED STATES OF AMERICA, *Appellee.*

BRIEF OF APPELLANTS

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WASHINGTON, SOUTHERN DIVISION

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JURISDICTION

These actions, consolidated in the District Court and in this Court, involve income taxes paid by the appellants, Harry Jones and Carrie A. Jones, husband and wife, for the calendar year 1946 totalling $3195.58 (R. 3, 7, 40). These taxes were paid on or about January 13, 1947 to the Collector of Internal Revenue at Tacoma, Washington, being in the sum of $1526.54 for Harry Jones and in the sum of $1669.04 for Carrie Jones (R. 3, 7). Claims for refund and amended returns were mailed to the Collector of Internal Revenue, Tacoma, Washington, on or about

January 15, 1947 (R. 3, 8, 9); amended claims were mailed to the Collector of Internal Revenue, Tacoma, Washington, on or about September 15, 1951 for Harry Jones (R. 3, 9, 11), and on or about November 18, 1952 for Carrie Jones (R. 11-12). No formal action having been taken on such claims, suits for refund were instituted July 24, 1953 (R. 4), in conformance with 26 U. S. Code, section 3772. The District Court assumed jurisdiction of the cases under 28 U. S. Code, section 1346 (a) (1), (R. 3), although appellee defended on the ground of lack of jurisdiction by reason of appellants' failure to timely file claims for refund as required by 26 U. S. Code, section 3772 (a) (1). (R. 4-5). Judgments sustaining appellee's position were entered June 10, 1954 (R. 34-35). Following the entry of orders denying appellants' motions for judgment notwithstanding the decision of the court or in the alternative for new trial (R. 38-39), appellants filed timely Notice of Appeal in each case (R. 41-42), and filed bond for costs on appeal (R. 43-44), pursuant to stipulation (R. 49), and 28 U. S. Code, section 1291, upon which the jurisdiction of this Court is based.

QUESTION INVOLVED

These appeals present the question of whether proof of mailing of a claim for refund of income taxes, postage prepaid, via the United States Mail, in an envelope securely sealed and addressed to the Collector of Internal Revenue, Tacoma, Washington, constitutes proof of filing of such claim for refund with the Collector of Internal

Revenue, Tacoma, Washington, when such proof is opposed solely by evidence that a search of all pertinent files discloses no record of having received such claim.

STATUTE INVOLVED

26 U. S. Code, section 322 (b) (1):

> "Period of Limitation. Unless a claim for credit or refund is filed by the taxpayer within three years from the time the return was filed by the taxpayer or within two years from the time the tax was paid, no credit or refund shall be allowed or made after the expiration of whichever of such periods expires the later. . . ."

26 U. S. Code, section 3772 (a) (1):

> "No suit or proceeding shall be maintained in any court for the recovery of any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected until a claim for refund or credit has been duly filed with the Commissioner, according to the provisions of law in that regard, and the regulations or the Secretary established in pursuance thereof."

STATEMENT

These cases are brought to this Court on appeals from the judgments in favor of appellee and against the appellants in suits brought to recover overpayments of income taxes for the calendar year 1946. It was stipulated at trial that the cases be consolidated and that the determination of *Carrie A. Jones v. United States of Amer-*

ica, No. 836, would rest upon the decision in *Harry Jones vs. United States of America,* No. 835. (R. 40). On appeal to this Court, it has been stipulated that the cases be consolidated for hearing and determination (R. 49).

By agreement between the parties, trial in the District Court and briefs and arguments on appeal will be limited to the issue presented herein, and that, inasmuch as the overpayment by appellants is an admitted fact and the amount may be computed mathematically, no determination was required in the District Court nor is required on appeal to this Court as to the amount of refund to which appellants might be entitled, should such become material.

By stipulation of the parties at the trial, it was agreed that the affidavits of Harry Jones, Carrie Jones, and Herman Schweizer would be received in evidence and treated as though the affiants therein had been present in Court and testified as to the facts set forth in the affidavits (R. 40).

The evidence presented by appellants was as follows. At all times material to these cases, Harry Jones and Carrie A. Jones have been husband and wife and residents of Benton County, Washington (R. 6). In January of 1947, appellants delivered to one Louis Harrison, public accountant, their records of income and expenses during the calendar year 1946 for the purpose of having Mr. Harrison draw their 1946 Federal income tax returns and

compute their income tax liability (R. 7). Following completion of Mr. Harrison's work, appellants on or about January 13, 1947, each received and signed their separate returns and mailed them in a single envelope to the Collector of Internal Revenue, Tacoma, Washington, together with a check in the sum of $3,195.58 for the payment of their total combined tax liability as computed (R. 7, 30). These returns and the check were received by the Collector and the income taxes for appellants thereby paid (R. 15).

A day or so after January 13, 1947, Harry Jones noted an error in the copies of the appellants' income tax returns in that the gross income set forth was incorrect, resulting in an incorrect and excessive computation of tax liability for appellants (R. 8). Appellant Harry Jones thereupon went to Mr. Harrison with the copies and pointed out the mistake. Mr. Harrison then re-computed the gross income, net income and tax liability for appellants and completed one amended return, and one claim for refund for each of appellants, together with carbon copies thereof (R. 8, 17-20, 25). These amended returns and claims for refund were signed by appellants and were then mailed by appellant Harry Jones in a single envelope, securely sealed, postage prepaid in the United States Post Office at Prosser, Washington, addressed to the Collector of Internal Revenue, Tacoma, Washington, which mailing occurred about January 15, 1947 (R. 8-9). The carbon copies of the claims for refund and amended returns,

retained by appellants, were placed in evidence as Exhibits 1 and 2 (R. 17-20, 25-26).

In January, 1951, appellants having heard nothing further on their claims, consulted with an attorney and the Treasury Department and thereafter ascertained that there was no record of the receipt of the amended returns and claims for refund by the Collector of Internal Revenue. On or about October 10, 1951, appellant Harry Jones filed with the Collector of Internal Revenue, Tacoma, Washington, an amended claim for refund, (R. 9, 21-23). and on or about November 18. 1952. appellant Carrie Jones likewise filed an amended claim for refund (R. 27-29). It should be noted that although the original claims for refund and amended returns were somewhat inexpertly completed, the demands for refund were as follows: for Harry Jones, $1082.54 (R. 17-20), and for Carrie Jones, $1225.04 (R. 25-26). By the amended claims, Harry Jones sought the refund of $1082.54 (R. 21-23), and Carrie Jones sought the refund of $1120.04 (R. 27-29).

No formal action having been taken on either the claims for refund or the amended claims for refund, appellants then instituted their suits for refund on July 24, 1953.

Opposing the above evidence of appellants, appellee presented evidence, likewise in affidavit form, that according to the records of the Collection Division of the

Seattle District Director's office at Tacoma, Washington (a) the records indicated that appellants' 1946 returns were received with payment of tax on January 14, 1947; (b) a search of all pertinent files revealed no record of having received claims for refund or amended returns prior to March 15, 1950, being the expiration date of the Statute of Limitation for the calendar year 1946; (c) the amended claims for refund were received October 10, 1951 and November 18, 1952 (R. 15).

As previously set forth, the sole question presented to the District Court and to be presented on appeal to this Court, by agreement of the parties, is whether appellants have sustained the burden of proving the filing of claims for refund in January, 1947, or, as contemplated by the statute, prior to March 15, 1950, the termination date of the statutory period of limitations.

Appellee, United States of America, took the position that the amended returns and claims for refund had never been filed with the Collector for the reason that no record of receipt could be found; therefore, the Statute of Limitations, (26 U. S. Code, section 322 (b) (1)), prevented the suit under 26 U. S. Code, section 3772 (a) (1), and thus prevented recovery by appellants.

In rendering judgment against appellants (R. 34-35), the District Court, after finding as facts that the mailing of the amended returns and refund claims had occurred as testified by appellants, and that the Collector had no

record of the receipt of such documents (R. 32), concluded that the appellants had failed to prove filing of the claims within the period of the three year statute of limitation, that proof of mailing was not proof of filing, and that the filing of a claim for refund "is not complete until the document is delivered and received by the proper official and filed by him" (R. 32-33). The appellants now appeal to this Court for a review of the decision of the District Court.

STATEMENT OF POINTS TO BE URGED

The statement of points relied upon by appellants appears in the record at pages 44-45. The points may be summarized as follows: That the Court below erred (1) in finding and concluding that the appellants' evidence of mailing the amended returns and claims for refund on or about January 15, 1947 was insufficient to sustain the burden of proof that the amended returns and claims for refund were filed with the Collector of Internal Revenue; that such evidence was overcome by appellee's evidence of inability to find any record of filing such amended returns and claims; that filing of such documents is incomplete until received by the proper official and filed by him; and that such conclusions are not supported by the evidence nor the law applicable thereto; and (2) in failing to conclude that appellants' evidence of mailing of said claims for refund on or about January 15, 1947 constituted proof of filing said claims within the required

statutory period and prior to suit, thereby satisfying the jurisdictional requirements of the law and entitling appellants to recovery.

SUMMARY OF ARGUMENT

The statutes set forth herein require the filing of a claim for refund not later than March 15, 1950 by appellants, which claims must be filed with the Commissioner or the Collector of Internal Revenue. On or about January 15, 1947, appellants mailed such claims for refund in an envelope, securely sealed, postage prepaid, and addressed to the Collector of Internal Revenue, Tacoma, Washington. Such evidence constitutes proof of receipt and filing unless rebutted. Evidence of inability to find any record of receipt or filing by the Collector of Internal Revenue does no more than raise a presumption of non-receipt and non-filing, is not proof of non-receipt, and does not overcome the presumption of receipt and filing. Appellants, having presented proof of filing of claims for refund within the statutory period, have satisfied the jurisdictional requirements for suit established by 26 U. S. Code, section 3772 (a) (1), and are entitled to recover their overpayment of taxes.

ARGUMENT

Appellants' evidence raised a presumption of timely filing of their claims for refund.

Under the laws of the United States applicable to this matter, appellants were required to file claims for

refund of overpayment of Federal income taxes for the calendar year 1946 not later than March 15, 1950. Failure to file claims for refund within such period would constitute non-performance of a condition required prior to the institution of suit for refund, would prevent any refund whatsoever, and would be a jurisdictional lack in such a suit.

As previously set forth, appellants presented evidence at the trial and the Court found as a fact that appellants had mailed claims for refund to the Collector of Internal Revenue, Tacoma, Washington, postage prepaid, within the statutory period, being on or about January 15, 1947. That such proof raises a presumption of receipt is supported by the ruling in *Avgerinion v. First Guaranty Bank*, 252 Pac. 535, 142 Wash. 73, wherein the Washington Supreme Court stated, at page 78:

> "But the presumption is that the government mails proceed in due course, and that a letter duly addressed to a person with the postage thereon, fully paid, is received by the person to whom it is addressed. This presumption has the force of evidence and is sufficient to justify finding that such is the fact in the absence of anything to the contrary."

This ruling of the Washington Supreme Court is also recognized by the Federal courts when considering factual situations such as in the instant case. In *Hudson v. United States*, 92 F. Supp. 555, the District Court of Louisiana was presented evidence by the parties in a manner similar to the cases here being considered in that affidavits were

presented to the Court and by agreement were received as evidence as if testified to by the parties. Taxpayers submitted copies of claim for refund and letter of transmittal which were mailed to the Collector of Internal Revenue within the statutory period. The evidence of the United States by the Collector of Internal Revenue demonstrated that upon an examination of the records of the Collector's office it was discovered that such claims were never filed in nor received by his office. The Court concluded from this evidence, at page 560, that:

> " . . . the claims were timely prepared and mailed, but a check of the Collector's office fails to show any record thereof."

Thereafter the Court discusses the legal consequences of such a situation and says:

> "There is unquestionably a presumption, when positive proof of the preparation and placing in the U. S. mails of a letter or document is submitted, that it was received by the one to whom it was addressed, in the absence of convincing evidence to the contrary."

After considering many other cases involving this type of problem, the Court concluded that the preponderance of the evidence was that the claims did reach the office of the Collector, that such satisfied the requirement of filing, and that taxpayers should recover because:

> "It cannot be believed that a just government would take advantage of this technical defense to deny to its citizens that which all considerations of equity and fair dealing would seem to demand." (Page 563).

See also *Crude Oil Corp. v. Commissioner of Internal Revenue,* 161 F. (2d) 809, 810, wherein it is said with reference to the filing of a capital stock tax return:

> "When mail matter is properly addressed and deposited in the United States mails, with postage duly prepaid thereon, there is a rebuttable presumption of fact that it was received by the addressee in the ordinary course of mail.
>
> "The presumption of receipt is a strong one. A finding in opposition to such inference of fact, absent evidence of nonreceipt, is against the weight of the evidence.
>
> "Proof of the due mailing is prima facie evidence of receipt."

In *Haag v. Commissioner of Internal Revenue,* 59 F. (2d) 516, a question arose as to whether or not a letter had been received by the Commissioner, evidence having been presented that a letter was written and mailed to the Commissioner. At page 517, the Circuit Court of Appeals, Seventh Circuit, said:

> "We are satisfied that the evidence necessitated a finding that the letter was sent as testified by petitioner. . . . As we view the question, it is one of presumption. As we are satisfied that the letter was mailed, the presumption arises that it was received. It follows, therefore, that we must assume that the letter was received by the Commissioner and later apparently lost or misplaced."

The evidence of appellants herein and the finding of the Court was that appellants mailed the amended returns and claims for refund to the Collector within a few days

of having mailed the original returns. As additional evidence, carbon copies of the amended returns and claims for refund were introduced in evidence. There is thus no question but that appellants did execute and mail the amended returns and claims for refund within sufficient time for the instruments to be received by the Collector even before the statutory period had commenced to run, because the original returns and payment check, mailed on January 13, 1947, were received in the normal course of the mails, on January 14, 1947. The presumption of receipt satisfied the requirement of proof of receipt which in turn satisfied the requirement of filing of the claims.

"Delivery to and receipt by" constitutes "filing" under the statutory requirements.

As previously recited, the Court, in the Conclusions of Law (R. 33), applied a rule that "filing is not complete until the document is delivered and received by the proper official and filed by him." The statutory requirements do not support such a rule of filing by the proper official. The statutory wording is (a) that a claim for refund must be filed "by the taxpayer" within the three year period (26 U. S. Code, section 322 (b) (1)), and (b) that no suit shall be maintained until a claim has been "filed with the Commissioner" pursuant to statutes and regulations (26 U. S. Code, section 3772 (a) (1)). "Filing with the Commissioner" has, of course, been extended to include the Collector, and the present successors, the Director and

District Director. The act of filing by the Collector or Commissioner is merely an administrative act to be performed by the recipient of the claim. "Filing" in the sense contemplated by these statutes can only be delivery to or receipt by, for the taxpayer can certainly not be held to the duty of following his claim into the internal, administrative handling of that instrument. Such a requirement would not only be ridiculous, but impossible. The rulings in the Hudson case, Crude Oil Corp. case, and Haag case, supra, while not spelling out that filing is accomplished by delivery, do establish such a rule by their ultimate decisions. This is also true of all other cases cited hereafter in this Brief by appellants. It is apparent that the Court erred in its Conclusion that filing was incomplete until filed by the official to whom addressed, and that proof by appellants of receipt constituted proof of filing as contemplated by the statutes.

The presumption of receipt by and filing with the Collector of Internal Revenue was not rebutted by appellee's evidence.

The presumption of receipt can only be rebutted by evidence of non-receipt. As stated in 20 *Am. Jur.* 200, Evidence, section 201:

> "The presumption that a letter properly mailed was received by the addressee is not conclusive, but may be rebutted by evidence showing that the letter was not in fact received."

Appellee therefore had the burden of showing by evidence

that the claims for refund were not received and could not do so by merely raising a presumption that they were not received. This evidence of appellee was not, however, that the claims were not received, rather that evidence was:

> "A search has been made of all pertinent files and there is no record of having received Claims or amended returns prior to the expiration date of the Statute of Limitation, which for the calendar year 1946, is March 15, 1950." (R. 15).

Such a statement means no more than that the Chief of the Accounting Branch of the Collection Division of the Seattle District Director's office is unable to find any record of the receipt of the claims or amended returns. It does not mean that such were not received. This statement, without even advising as to who made the search, does no more than create a presumption of non-receipt.

In *Arkansas Motor Coaches v. Commissioner of Internal Revenue* 198 F. (2d) 189, the Court of Appeals, Eighth Circuit, was faced with the question of whether or not a taxpayer had filed a petition for review of a Collector's ruling with the Tax Court within the statutory period. Although in that case, the petition arrived at the Tax Court and the dispute was as to its arrival date, the distinction is unimportant in that proper mailing has been found by the Court as a fact in the instant case. At page 191, the Court stated:

"Acting in good faith and with due diligence petitioner

entrusted its petition to the United States mails for transportation from Dallas, Texas, to Washington, D. C., in ample time so that it could be filed and served within the ninety days from the mailing of the notice of rejection of its claim by the Commissioner. It used the same agency for transmitting its petition as the Commissioner had used in transmitting his notice. Where, as in this case, matter is transmitted by the United States mails, properly addressed and postage fully prepaid, there is a strong presumption that it will be received by the addressee in the ordinary course of the mails. . . . *While the presumption is a rebuttable one it is a very strong presumption and can only be rebutted by specific facts and not by invoking another presumption.*" (Italics ours).

. . . . . .

"In the instant case there was a strong presumption that this petition was received in Washington, D. C., on the 31st day of January, 1951. What evidence is there that it was not received by the addressee on that date? There is the docket entry. The clerk did not testify that he in fact received the petition on that date and the correctness of the docket entry is bottomed on the presumption that an officer properly performs his duty but this is simply a presumption and not the kind of evidence sufficient to overcome the strong presumption that the mail was received by the addressee on January 31, 1951, which was several days before the expiration of the ninety day period within which it should have been filed."

See also *Central Paper Co. v. Commissioner of Internal Revenue,* 199 F. (2d) 902, wherein the Court refers to the presumption of receipt, and at page 904, states:

"The presumption is not rebutted by the fact that the letter might possibly have been lost or misplaced by postal employees before delivery to the mail box of The Tax Court, in the absence of any evidence as to when it was placed on the ledge beside the mail

box, or when it came into the possession of the messenger from The Tax Court."

In *J. H. Williams & Co. v. United States,* 48 F. (2d) 672, the Court of Claims was required to make a determination as to the filing of a claim for refund, prior to the expiration of the statutory period. The evidence of taxpayers showed delivery to the chief of the amortization section of the Bureau of Internal Revenue of amended return, schedules, amortization claim and claim for refund, together with a letter of transmittal which referred to all papers filed except the claim for refund. Testimony on behalf of the United States, by an employee of the claims control section of the Bureau of Internal Revenue whose duty it was to make card records of all claims, was to the effect that she was unable to find any record of the claim for refund. At page 674, the decision states:

"We have no reason to disbelieve anything testified to by the defendant's witness. We think all that she said is true, but her testimony shows nothing more than that she could find no card record of a claim for refund having been filed by plaintiff on February 10, 1922, but this testimony does not controvert the positive fact established by the plaintiff that the claim was prepared and filed. It is quite probable that, with the many thousands of cases, documents and claims pending and being constantly considered and audited in the Bureau of Internal Revenue, the claim of this plaintiff, having been attached to an amended return and transmitted directly to the amortization section instead of through the office of the collector of internal revenue, as is the usual cusom, became misplaced, lost, or associated with some other file of some other

> taxpayer when it was detached from the amended return and amortization claim."

For additional cases relating to the rebuttal of the presumption of receipt, see *Eakins v. United States,* 36 F. (2d) 961; *Merchants & Mfrs' Ass'n v. First Nat'l Bank,* 40 Ariz. 531, 14 P. (2d) 717; *Click v. Sample,* 73 Ark. 194, 83 S. W. 932; *Ripley Nat. Bank v. Latimer,* 64 Mo. App. 321; *91 A. L. R. 161,* Annotation.

The foregoing cases establish two rules applicable hereto: (1) proof of mailing establishes a strong presumption of receipt and thus filing of a claim; (2) this presumption can only be rebutted by evidence of non-receipt, and cannot be rebutted by a presumption.

The facts established and found by the Court proved mailing of the claims for refund, and thereby created the strong presumption that the Collector of Internal Revenue, Tacoma, Washington, received the claims for refund. Such constitutes proof of compliance with the requirements regarding filing of claims. In attempting to rebut this proof, appellee has failed because appellee presented no evidence of non-receipt. Appellee's evidence, at its very strongest, merely creates a presumption of non-receipt; that is, the party who searched the pertinent files has been unable to find any record of the claims and it is therefore presumed that no claims were received. However, under the rules of the cases cited herein, appellee's presumption is insufficient to set aside appellants' proof.

CONCLUSION

On the basis of the foregoing, it is submitted that the District Court erred in dismissing appellants' suits for refund and in failing to grant judgments in favor of appellants and against appellee.

Respectfully submitted,

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